

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND**

|   |   |                              |
|---|---|------------------------------|
| <b>In Re: 16-11025-df</b>               | ) | <b>Chapter 13 Proceeding</b> |
|   | ) |                              |
| <b>John H. Nott and Melissa A. Nott</b> | ) |                              |
| <b>Debtor</b>                           | ) |                              |
|   | ) |                              |
| <b>Bank of America, N.A.</b>            | ) |                              |
| <b>Movant</b>                           | ) |                              |
|   | ) |                              |
| <b>vs.</b>                              | ) |                              |
|   | ) |                              |
| <b>John H. Nott and Melissa A. Nott</b> | ) |                              |
| <b>and John Boyajian , Trustee</b>      | ) |                              |
| <b>Respondent</b>                       | ) | <b>October 26, 2017</b>      |

**MOTION FOR RELIEF FROM AUTOMATIC STAY**  
**(REAL PROPERTY)**

Bank of America, N.A., (“Movant”) hereby moves this Court, pursuant to 11 U.S.C. § 362, for relief from the automatic stay with respect to certain real property of the Debtors having an address of 460 Ross Hill Road, Charlestown, RI, 02813 (the “Property”). In further support of this Motion, Movant respectfully states:

1. A petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtors on June 9, 2016.
2. A Chapter 13 Plan was confirmed on September 27, 2017.
3. The Debtor Melissa A. Nott fka Melissa A. Boss has executed and delivered or is

otherwise obligated with respect to that certain promissory note in the original principal amount of \$162,011.00 (the “Note”). A copy of the Note is attached hereto as Exhibit A. Movant is an entity entitled to enforce the Note and Mortgage (defined below).

4. Pursuant to that certain Mortgage (the “Mortgage”), all obligations (collectively, the “Obligations”) of the Debtor Melissa A. Nott fka Melissa A. Boss under and with respect to the Note and the Mortgage are secured by the Property. On March 1, 2017 the Debtor entered into a Loan Modification Agreement with the Movant regarding the subject Mortgage. A copy of the Mortgage and Loan Modification Agreement are attached hereto collectively as Exhibit B.

5. All rights and remedies under the Mortgage have been assigned to the Movant pursuant to an assignment of mortgage. A copy of the assignment of mortgage is attached hereto as Exhibit C.

6. As of October 19, 2017, the outstanding amount of the Obligations less any partial payments or suspense balance is \$184,138.95.

7. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred \$850.00 in legal fees and \$181.00 in costs. Movant reserves all rights to seek an award or allowance of such fees and costs in accordance with applicable loan documents and related agreements, the Bankruptcy Code and otherwise applicable law.

8. As of October 19, 2017, the date and amount of the last payment on the Property are August 3, 2017 and \$1,160.34, respectively.

9. The following chart sets forth the number and amount of post-petition payments due pursuant to the terms of the Note that have been missed by the Debtors as of October 19, 2017:

| <b>Number of Missed Payments</b> | <b>From</b> | <b>To</b>  | <b>Monthly Payment Amount</b> | <b>Total Missed Payments</b> |
|----------------------------------|-------------|------------|-------------------------------|------------------------------|
| 3                                | 08/01/2017  | 10/01/2017 | \$1,160.34                    | \$3,481.02                   |
| ...                              | ...         | ...        | ...                           | ...                          |
|                                  |             |            |                               |                              |

**Total: \$3,481.02**

The total set forth in this paragraph represents only the post-petition principal, interest, and escrow (if any) amounts that are, as of October 19, 2017, due but not paid, less any partial payments or suspense balance. It cannot be relied upon as a payoff or reinstatement amount.

10. The estimated market value of the Property is \$211,700.00. The basis for such valuation is Debtor's Schedule A. The estimated liquidation value of the Property is \$197,651.20, calculated as the fair market value less (i) a reasonable realtor's fee 6%; (ii) deed stamps \$846.80; and (iii) anticipated closing costs associated with a real estate closing \$500.00.

11. Upon information and belief, the encumbrances on the Property listed in the

Schedules or otherwise known, including but not limited to the encumbrances granted to Movant, listed in order of priority, are:

| Holder                | Type     | Amount       |
|-----------------------|----------|--------------|
| Bank of America, N.A. | Mortgage | \$184,138.95 |
| ...                   | ...      | ...          |

**Total: \$184,138.95**

12. R.I. Local Bankr. Form R (“Relief from Stay Worksheet – Real Estate”) is attached hereto as Exhibit D.

13. Pursuant to 11 U.S.C. § 362(d)(1), cause exists for relief from the automatic stay for the following reasons:

- a. Post-Petition mortgage payments have not been made to the Movant.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

3. For such other relief as the Court deems proper.

Bank of America, N.A.

By /s/Derek A. Castello  
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Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006 (f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Mall, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.